IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.10.2007

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

W.P.No.14984 of 2006

V.Lakshmanan ... Petitioner

vs.

The Collector of Ramanathapuram,
Ramanathapuram. ... Respondents

This petition came to be numbered by transfer of O.A.No.3192 of 1994 on the file of the Tamil Nadu Administrative Tribunal praying for the issuance of a Writ of Certiorarified Mandamus, to quash the respondent's order NO.N.K.A1/70035/92, dated 28.09.1993 and direct the respondent to alter the date of birth of the petitioner as 16.02.1936 in the Service Book and to continue the petitioner in service treating 16.02.1936 as the correct date of birth.

For Petitioner : Mr.M.Velusami

For Respondents : Mrs.Lita Srinivasan,
Govt., Advocate

O R D E R

The petitioner, a retired Zonal Deputy Tahsildar, Taluk Office, has challenged the order of rejection for alteration of Date of Birth and for further orders.

2. Facts leading to the Writ Petition are as follows:
The petitioner joined the service as Junior Assistant in the Revenue Department on 01.05.1956 and gained promotions to the level of Zonal Deputy Tahsildar till 28.09.1993. As per the School records, his date of birth is 13.07.1934 and the same was entered in his service records. But the correct date of birth of the petitioner is 16.02.1936. Therefore, the petitioner moved the learned Judicial Magistrate Court, Mudukulathoor for a direction to the Executive officer of Abiraman Town, to enter his date of birth in the Birth register. The Magistrate enquired into the matter through the Tahsildar, Kamuthi and to support his case, the petitioner produced horoscope, birth extract of his twin brother, etc. On enquiry, the Tahsildar submitted his report, supporting the case of the petitioner and the learned Judicial Magistrate, by order dated 01.07.1992, directed the Abiraman Town Panchayat to enter 16.02.1936 as the date of birth of the petitioner. Accordingly, his date of birth was entered as 16.02.1936 in the Birth extract.

3. The petitioner has further submitted that he had requested the respondents to correct his date of birth in the Service records. Since no orders were passed till 10.07.1992, the petitioner was

constrained to file O.A.No.3518 of 1992 before the Tamil Nadu Administrative Tribunal for a direction to the respondent to correct the petitioner's date of birth as 16.02.1936. While admitting the Original Application, the Tribunal granted interim directions, directing the respondents to retain the petitioner in service beyond 31.07.1992, till the disposal of the Original Application. Pending Original Application, the respondent, by order dated 29.07.1992, rejected the case of the petitioner, without assigning any reason whatsoever. This necessitated the petitioner to file another application in O.A.No.1098 of 1993, before the Tribunal and both the applications were taken up together and disposed of by a common order, dated 02.04.1993, directing the respondents therein to conduct an enquiry, after allowing the petitioner to adduce necessary evidence in support of his claim and further directed them to allow the petitioner to continue in service till a decision was arrived at. Pursuant to the directions, the Sub Collector, Paramakudi, by his communication, dated 08.07.1993, directed the petitioner to appear before him on 20.07.1993 along with his brothers and sisters and two other old people of the Village for enquiry. On 20.07.1993 and on subsequent dates, the petitioner along with his five brothers and sisters participated in the enquiry and let in evidence to the effect that his brother, V.Raman and himself were twins and their correct date of birth is 16.02.1936. Two independent witnesses were examined, who also deposed that the petitioner's correct date of birth, as 16.02.1936. Therefore, the Sub-Collector, Paramakudi submitted a report to the respondent, recommending alteration of date of birth of the petitioner as 16.02.1936. However, the respondent, by his impugned order, dated 28.09.1993, without proper application of mind and citing flimsy reasons, rejected the petitioner's request. Aggrieved by the order of the respondent, the petitioner has preferred the present Writ Petition.

4. In the counter affidavit, the respondent has denied the contention that the petitioner discovered his date of birth as 16.02.1936 only in June' 1992 and that the same has not been proved by producing any acceptable evidence. Though the petitioner had referred to the Birth Extract of his twin brother, it has not been produced during enquiry and the learned Judicial Magistrate, Mudukulathur, did not hold a full fledged enquiry. It is further submitted that neither the Government nor the Collector were impleaded in the proceedings and therefore, the outcome of the proceedings is not binding on them. Further, the petitioner has failed to follow the procedure as stipulated under Rule 49(b) of the Tamil Nadu State and Subordinate Service and under such circumstances, the birth register entries based on the Court Order cannot be taken into account while considering the case of alteration of Date of Birth.
5. As regards the contention that no orders were passed till 10.07.1992 on the letter of the petitioner, dated 06.07.1992, the respondent has submitted that the application, dated 06.07.1992 was received in the Office only on 09.07.1992 and therefore, it could not be finalised before 10.07.1992. However, speedy action was taken to finalise the matter, since the petitioner was due to retire on 31.07.1992. On the strength of the report of the Revenue Divisional officer, Paramakudi, dated 22.07.1992, final orders were passed on the request of the petitioner on 29.07.1992. The interim order passed in O.A.No.3518 of 1992 on 27.07.1992 was brought to the notice of the respondent, by the Government, vide its letter dated 29.07.1992 and therefore, the contention of the petitioner that the fact of filing Original Application before the Tribunal was informed to the Office of the respondent on 17.07.1992 is not true.

6. The respondent has further submitted that the petitioner, being a senior Government Official with considerable length of service, ought to have known the modalities, procedure, conduct of an enquiry into this matter and the time limit required for finalising such application. Despite the paucity of time, the enquiry stipulated under Rules was ordered on his belated application. The respondent has further submitted that the petitioner had failed to attend the enquiry and proceeded on leave, which shows his mala fide intention. The respondent has denied the contention of the petitioner that the rejection order was made without conducting any enquiry and without perusing any documentary evidence.

7. The respondent has further submitted that the Sub Collector, Paramakudi was appointed as Enquiry officer and though witnesses were examined to prove his date of birth as 16.02.1936, no documents were filed to prove his claim. The enquiry report of the Sub-Collector, Paramakudi, was examined carefully on the basis of the materials produced by the petitioner during enquiry. On perusal of the entire materials, the respondent has found certain commissions and ommissions in the enquiry report and after analysis the entire documentary evidence, the claim of the petitioner was rejected. The respondent has further submitted that rule 49(a) of the Tamil Nadu State and Subordinate Service Rules envisages that an enquiry must be conducted by an officer not below the rank of Deputy Collector. Accordingly, the Sub Collector, Paramadkudi was ordered to conduct enquiry and therefore, there is no violation of the orders passed by the Tamil Nadu Administrative Tribunal.

8. The respondent has further submitted that the difference in the name of the petitioner's mother in the birth extract produced by the petitioner cannot be treated as clerical mistake. Generally in the birth extract, nativity of a person is mentioned, but in the instant case, the details with regard to his native place were not available. In the absence of the address, the said certificate is not acceptable. The respondent has further submitted that the horoscope produced by the petitioner contained number of alterations, commissions and omissions and therefore, the same was not taken as a reliable evidence with regard to date of birth of the petitioner. For the forgoing reasons, the respondent has prayed for dismissal of the Writ Petition.

Heard Mr.M.Velusami, learned counsel for the petitioner as well as Mrs.Lita Srinivasan, learned Government Advocate appearing for the respondent.

9. Before adverting to the facts of the case, it would be relevant to extract some of the decisions of the Hon'ble Supreme Court on the question of alteration of date of birth.

10. The Supreme Court in Secretary & Commissioner v. R.Kirubakaran reported in 1994 Supp. (1) SCC 155, in Parargraph 7, held as follows:

"unless a clear case, on the basis of materials which can be held to be conclusive in nature, is made out by the respondent, the Court or the tribunal should not issue a direction, on the basis of materials which make such claim only plausible. Before any such direction is issued, the Court or the tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order."

11. In State of Tamil Nadu v. T.V.Venugopalan reported in 1994 (6) SCC 302, the Supreme Court, in paragraph 7, held as follows:
"The evidence is neither unimpeachable nor irrefutable. The Tribunal in its judicial review is not justified in trenching into the field of appreciation of evidence and circumstances in its evaluation to reach a conclusion on merits as it is not a Court of appeal."

12. In Commr. of Police v. Bhagwan V. Lahane reported in 1997 (1) SCC 247, the Supreme Court in Paragraph 6, held as follows:
"The extract from the birth register produced by him along with his representation being inconsistent with the School Leaving Certificate produced by him earlier, he ought to have proved to the satisfaction of the competent authority that he was given a name before or soon after his birth and that his name was entered in the birth register at the time of registration of his birth."

13. In G.M.Bharat Coking Coal Ltd., v. Shib Kumar Dushad, reported in 2000 (8) SCC 696, the

Supreme Court considered the scope of judicial review in matters relating to alteration of Date of Birth. After analysing various decisions on this point, the Apex Court held that where the question regarding correctness of date of birth as entered in service record is raised by the employee long after his joining the service and the employer has decided the question, following the procedure prescribed by statute, statutory rules or instructions, and in the absence of any arithmetical or typographical error apparent on the face of the record, the High Court should not interfere with such decision of the employer in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India.

14. In a recent decision in State of Gujarat & others v. Vali Mohmed Dosabhai Sindhi reported in 2007 (1) LW 121, again the Supreme Court, at Paragraph 10, held as follows:
"An application for correction of the date of birth should not be dealt with by the Courts, Tribunal or the High Court keeping in view only the public servant concerned. It need not be pointed out that ny such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may loose the promotion for ever."

In the same Paragraph, the Supreme Court further observed that,
"As such, unless a clear case on the basis of materials which can be held to be conclusive in nature, is made out by the respondent and that too within a reasonable time as provided in the rules governing the service, the Court or the Tribunal should not issue a direction or make a declaration on the basis of materials which make such claim only plausible. Before any such direction is issued or declaration made, the Court or the Tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order. If no rule or order has been framed or made, prescribing the period within which such application has to be filed, then such application must be within atleast a reasonable time. The applicant has to produce the evidence in support of such claim, which may amount to irrefutable proof relating to his date of birth. Whenever any such question arises, the onus is on the applicant, to prove about the wrong recording of his date of birth, in his service book."
"The Court or the Tribunal must, therefore, be slow in granting an interim relief or continuation in service, unless prima facie evidence of unimpeachable character is produced because if the public servant succeeds, he can always be compensated, but if he fails, he would have enjoyed undeserved benefit of extended service and thereby caused injustice to his immediate junior."

15. In the case on hand, the respondent has considered the case of the petitioner and followed the procedure of conducting an enquiry into the dispute with regard to the age of the petitioner, giving sufficient opportunity to the petitioner to prove his case. On enquiry, the respondent has found that the petitioner has not submitted any clinching evidence and irrefutable materials to corroborate the birth extract. Unless clear materials are produced before the competent authority for effecting alteration of date of birth, this Court cannot sit in appeal over the decision of the fact finding authority.
S. MANIKUMAR, J.

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Therefore, this Court in exercise of powers under Article 226 of the Constitution of India cannot grant any declaratory relief on the basis of materials found not supportive of the petitioner's claim. A

finding of fact can be reversed, if it is perverse or if the authority had failed to consider the material evidence for arriving at a proper conclusion. In the case on hand, I do not find that the findings arrived at by the respondents can be termed as perverse and therefore, it does not warrant any interference. There is no illegality or irregularity in the procedure followed by the authorities.

16. In the result, the Writ Petition is dismissed. No costs.

03.10.2007
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To
The Collector of Ramanathapuram,
Ramanathapuram.

W.P.No.14984 of 2006